IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7615 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any O

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5. Whether it is to be circulated to the Civil Judge? : NO

RAJESH ALIAS RAJU CHHAGANBHAI BHOGEKAR (CHHARA)

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 7615 of 2001

MS DR KACHHAVAH for Petitioner No. 1

MR D.P. JOSHI, ASSTT. GOVERNMENT PLEADER for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 22.8.2001 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a dangerous person. The detaining authority has considered two offences registered against the detenu and statements of two anonymous witnesses recorded by the sponsoring authority and verified by the detaining authority and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public order.

3. The only ground that is pressed into service by learned Advocate Ms D.R. Kachhuva is that the petitioner was in Police custody when the order was passed and was on Police remand when the order was executed. The detaining authority has not taken into consideration this aspect. This reflects that there is non-application of mind on the part of the detaining authority or that the order is passed in absence of consideration of the relevant material. She places on record a certified true copy of report made by Kalol City P.S.I under Section 169 of Cr.P.C in respect of detenu, which indicates that the detenu was brought under a transfer warrant from the Court of Metropolitan Magistrate, Ahmedabad Court No.2, where he was under arrest in connection with an offence registered at Vejalpur Police Station C.R No. I-204/2001. Formal arrest was made on 22nd August, 2001 at 13.30 hours and the detenu was sought on Police remand, which was granted upto 11.30 hours on August 24, 2001 by the learned JMFC, Kalol. Ms. Kachhuva therefore submitted that when the order was passed the detenu was in judicial custody and the satisfaction recorded by the authority therefor cannot be considered as genuine. She placed reliance on the decision of the apex Court in Amritlal and ors. Vs. Union Government, reported in AIR 2000 SC 3675.

4. Learned Assistant Government Pleader Mr. D.P. Joshi has opposed to this petition. He however states on instructions from the concerned Constable Chehraji and on verification of the file that the submission made by Ms. Kachhuva regarding the detenu being in custody is factually correct and there is no dispute on these facts. He further states that the order was executed on 22nd August, 2001 at 20.00 hours at Ambica Police Chowki, Kalol.

5. Having regard to the contentions raised before this Court, it is clear that the detenu was in custody when the order was passed. The satisfaction recorded by the detaining authority for the need for immediate exercise of powers under Sec.3 of the PASA Act, is therefore, not genuine. The order of detention would stand vitiated on this ground alone in view of the decision of the apex Court in Amritlal and ors. Vs. Union Government, reported in AIR 2000 SC 3675, wherein it is observed that there must be cogent material before the detaining authority for passing the order of detention that the detenu is likely to be released on bail. Inference has to be drawn from available material on record. In absence of any such material, such inference cannot be drawn. The apex Court observed that likelihood of detenu moving an application for bail is not sufficient and it is different from likelihood of the detenu being released on bail. In view of the above decision, which is squarely applicable to the facts of the present case, the petition deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated 22nd August, 2001 passed by the Commissioner of Police, Ahmedabad City is quashed and set aside. Detenu - Rajeswh alias Raju Chhaganbhai Bhogekar (Chhara) be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave, J.)

*/Mohandas